knowledge of the plaintiff's rights, but also those made before the acquisition of such knowledge. And a glance at the consequences of such an injunction justifies this conclusion. The plaintiff is given the benefit of his contract, the E. Co. is compelled to observe its contractual obligations, and the defendant can compel the E. Co. to indemnify it for any damage it may suffer from the loss of its contracts with the E. Co.

INSURANCE—RIGHTS OF LIFE-TENANT AND REMAINDERMAN WHERE PROPERTY IS INSURED BY TESTATRIX.—The testatrix, having taken insurance running to herself and her legal representatives, devised the insured property to her husband for life, with remainder over. The property was destroyed by fire and the defendant paid the executor who was also the life-tenant, who spent part of the money in rebuilding. The trustee for the remaindermen brought this action against the insurance company, claiming it should have paid them at least a *pro rata* share of the insurance. *Held,* for the defendant. *Oldham's Trustee* v. *Boston Ins. Co.* (Ky. 1920) 226 S. W. 106.

When the policy runs to the insured and his legal representatives, the executor or administrator is the proper one to sue, for it is a *chose* in action which does not run with the realty. *German Ins. Co.* v. *Wright* (1897) 6 Kan. App. 611, 49 Pac. 704; *Geo. Home Ins. Co.* v. *Kinnier's Admx.* (Va. 1877) 28 Gratt. 88. But may the plaintiff in the instant case have the benefit of the proceeds of the insurance policy in the hands of the executor? Since in fire insurance an interest in the property destroyed is necessary, the better reasoned opinion is that the executor sues for the benefit of those who have taken the property, subject only as the realty is, to the payment of debts. *Wyman* v. *Wyman* (1863) 26 N. Y. 253; *cf. Farmers' Mutual Ins. Co.* v. *Graybill* (1873) 74 Pa. St. 17; *Parry* v. *Ashly* (1829) 3 Sim. Ch. 97. For the contention that the heirs or devisees have no claim to the insurance, Ellis, *Insurance* (1854) 167, the case of *Mildmay* v. *Folgham* (1797) 3 Ves. 471, is relied on. This case, as pointed out in *Wyman* v. *Wyman, supra,* 259, rests on the peculiar nature of the mutual insurance company, whose policy was involved. As to the respective rights of the life-tenant and remainderman, the life-tenant is entitled at least to the use of the insurance money for life. *Culbertson* v. *Cox* (1882) 29 Minn. 309, 13 N. W. 177. In Virginia, on the theory that the realty has been converted into personalty, the life-tenant is entitled to the use of the money only and may not rebuild unless the remainderman consents. See *Haxall's Ex'rs* v. *Shippen* (Va. 1839) 10 Leigh 536, 551. But in the analogous situation, where the life-tenant insures, those jurisdictions which hold that he retains the recovery in trust for the remainderman, allow him to discharge the trust by rebuilding. See *Green* v. *Green* (1899) 56 S. C. 193, 209, 34 S. E. 249; *Convis* v. *Citizens' Mut. Ins. Co.* (1901) 127 Mich. 616, 623, 26 N. W. 994. To the facts of the instant case, this rule seems equally applicable. It would put the remainderman in *statu quo,* benefit the life-tenant, and encourage him to use the land during his life,—results which accord with social policy.

JOINT TORTFEASORS—RELEASE OF ONE DOES NOT RELEASE OTHERS.—The plaintiff's intestate was killed as a result of the joint negligence of the defendant and one H. Previous to this action, the plaintiff had released H by an instrument under seal which reserved no rights against the defendant. *Semble,* the release of H did not release the defendant. *Warner* v. *Brill* (App. Div. 3rd Dept. 1921) 185 N. Y. Supp. 586.

The old rule that the release of one joint tortfeasor releases all, even though the rights against the others were expressly reserved, has been modified by the more recent decisions. Such an instrument is now usually construed as a covenant not to sue. *Dwy* v. *Connecticut Co.* (1915) 89 Conn. 74, 92 Atl. 883; *Bland* v.

Lawyer-Cuff Co. (Okla. 1919) 178 Pac. 885; (1915) 15 COLUMBIA LAW REV. 460. However, some states still retain the ancient technical rule. *Louisville & N. Ry.* v. *Allen* (1914) 67 Fla. 257, 65 So. 8; *cf. Larson* v. *Anderson* (1919) 108 Wash. 157, 182 Pac. 957. The common sense and justice of the modern view are apparent. The intent of the parties is effectuated, and the plaintiff is allowed to recover full satisfaction for his injuries. This result does not, as has been urged, give him double compensation, for satisfaction of the claim destroys it. See *Dwy* v. *Connecticut Co., supra,* 95. It has been suggested that a distinction should be drawn between cases of liquidated damages and those of unliquidated damages on the ground that, in the latter cases, as there is no fixed amount, any sum given for the release ought to be considered as full satisfaction. *Gilbert* v. *Timms* (1905) 28 Ohio C. C. 107; see *Louisville & N. Ry.* v. *Allen, supra,* 275. This distinction seems unwarranted. The question of satisfaction is one of fact which is capable of being settled by a jury. The statement of the court in the instant case goes further than any of the previous decisions. The release is freed of all technical significance and is treated as meaning just what it says, *i. e.,* the person mentioned, and no one else, is released. This is a commendable change in the law. It will probably be followed, especially in view of the Debtor and Creditor Law, N. Y. Cons. Laws (1909) c. 12, §§ 230-232, although an Ohio court refused to extend a similar statute to cover cases of tortfeasors. *Gilbert* v. *Timms, supra.*

LANDLORD AND TENANT—TRANSFER BY LESSEE OF LEASE RESERVING HIGHER RENTAL —ASSIGNMENT OR SUB-LEASE?—The defendant lessee transferred his entire unexpired term to X, under an instrument providing for an increased rental and reserving the payment of rent to himself. The plaintiff lessor prevented X from occupying the premises. In an action for rent, the defendant interposed as a defence the eviction of X by the plaintiff. *Held,* the defense was good. *O'Connell* v. *Sugar Co.* (App. T. 1st Dept. 1920) 114 Misc. 540, 187 N. Y. Supp. 98.

Almost universally, a transfer by the lessee of the entire unexpired term, as in the instant case, operates as an assignment and not as a sub-lease. *Smiley* v. *Van Winkle* (1856) 6 Cal. 606; *Sexton* v. *Chicago Storage Co.* (1889) 129 Ill. 318, 21 N. E. 920; *Craig* v. *Summers* (1891) 47 Minn. 189, 49 N. W. 742. The same effect is given to a transfer of a longer term than that remaining to the lessee. *Stewart* v. *Long Island Ry.* (1886) 102 N. Y. 601, 8 N. E. 200; see *Mulligan* v. *Hollingsworth* (C. C. 1900) 99 Fed. 216, 221. Consequently, the eviction of the transferee would be no defense to an action against the lessee on his covenant to pay rent. But a few courts have called the transfer a sub-lease where it showed an intention to create a sub-lease, as evidenced by a reservation of a different rental, rights of entry and a surrender of the premises to the original lessee. *Collins* v. *Hasbrouck* (1874) 56 N. Y. 157; see *Collamer* v. *Kelley* (1861) 12 Iowa 319, 323; *Drake* v. *Lacoe* (1893) 157 Pa. St. 17, 28, 27 Atl. 538; but see *Woodhull* v. *Rosenthal* (1875) 61 N. Y. 382, 392. Even in New York, however, as between the lessor and the transferee, the general rule appears to prevail. *Stewart* v. *Long Island Ry., supra.* The court in the instant case recognizes this, but bases its decision on a *dictum,* namely, that although as between the original lessor and the transferee, the transfer is an assignment, the same transaction may give rise to a sub-lease as between the original lessee and the transferee if they so intend. See *Stewart* v. *Long Island Ry., supra,* 608. There should be no objection to giving such a transaction a dual character. The lessee, in the absence of a novation, must answer for his transferee's non-performance of the duty to pay rent. *Halbe* v. *Adams* (1916) 172 App. Div. 186, 158 N. Y. Supp. 380. But if no such duty exists, the lessee's liability should be avoided by the defenses which would be available to his transferee. And since in an action against the transferee eviction would have been a good defense, the result in the instant case may be justified in New York.